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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,319	12/08/2003	Adi Shefer	4686-125 US	5051

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/731,319

Applicant(s)

SHEFER ET AL.

Examiner

Gina C. Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/20/06 4/06/05, 5/03/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 18, the term "device" renders the claim vague and indefinite. The metes and bounds of the scope of the limitation are unclear.

In claim 22, the term "article" renders the claim vague and indefinite. It is not clear what this 'article' is, and how this limitation further limits the microcapsules of instant claim.

The remaining claims are rejected as they are based on indefinite base claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-8, 10, 14-16, 17, 22, 23, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Maruyama et al. (US 4269729), as evidenced by US 6001789.

Maruyama discloses microcapsules comprising linapool (Clog P of less than 3) encapsulated with water-soluble (moisture sensitive) polyvinyl alcohol and the method of making thereof. See instant claims 1, 2, 4, 5, and 25. The capsules have size of 100 microns. See instant claim 8. Since the composition is in the form of powder, it meets the anhydrous limitation of instant claim 10, 14, and 22. The fragrance is dissolved in paraffin in the process of making the composition, and paraffin meets the moisturizer limitation of instant claim 16. The "deodorant body powder" of instant claim 17 is directed to the intended use of the prior art powder product, so no patentable weight is given. See MPEP § 2111.02. In claim 1, the fragrance releasing properties of instant claims 1, 15, and 23 are viewed inherent to the prior art composition which meets the limitations of the present claims. US 6001789 teaches that linalool has Clog P value of 2.55 and boiling point of 193 °C. See col. 9, line 25. For claims 11-13,

Claims 1-3, 8, 9, 18-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Trinh et al. (US 6001789).

Trinh discloses block detergent composition which comprises water-activated matrix perfume microcapsules. See Examples I –III; instant claims 18, 20, 22, 24. The perfumes used in the examples are illustrated in col. 18, line 30 – col. 21, line 37, and their properties are disclosed in Tables 1-3 of col. 7, line 37 – col. 3, line 61. See instant claims 1-3. The size of the microcapsules is disclosed in col. 13, lines 30-33. See instant claims 8 and 9. The fragrance burst property as described in instant claims 1, 19, and 23 are inherent to the prior art composition that meets the limitations of the instant claims. The products of instant claim 21 are directed to the intended use of the

stick composition of instant claim 18, and no patentable weights are given to these terms. MPEP § 2111.02.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 8, 10-14, 16, 17, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smithies et al. (US 4183911) in view of Ferentchak (US 4818522).

Smithies discloses an antiperspirant spray comprising perfume and encapsulated antiperspirant actives.

Smithies does not specifically indicate to encapsulate perfume.

Ferentchak teaches antiperspirant formulations comprising encapsulated water immiscible perfume or antibacterial with outer materials that slowly dissolves with perspiration. See Examples I-III; instant claims 1, 10, 14, 16. The size of the particles is taught in col. 5, lines 28-37; instant claim 8.

While Ferentchak does not disclose the Clog P value of the perfume that is exemplified in the reference, the Clog P limitation of the instant claims 1 and 4 are obvious over the prior art, since the claims read on the all Clog P values. It is viewed that the selection of the perfume depends on the formulator's choice.

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It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the antiperspirant spray of Smithies by encapsulating perfume composition, as motivated by Ferentchak, because both are directed to antiperspirant composition comprising perfume, and Feretchak teaches that the slow release of adjuvants is advantages. The skilled artisan would have had a reasonable expectation of successfully producing an antiperspirant spray that slowly releases perfume.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No.

7115282 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of the claims are directed to controlled release composition comprising a plurality of moisture sensitive micro-spheres of overlapping limitations. The fragrances of the '282 claims are defined in the specification col. 7, lines 39-67, which meet the instant claim limitations which encompasses those perfumes having Clog P values of less than or equal to, and greater than equal to, 4.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is (571) 272-8605. The examiner can normally be reached on M-F 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gina C. Yu
Patent Examiner